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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-07-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE N. KANNADASAN

L.P.A.NO.15 OF 2002
and
C.M.P.NO.1706 & VCMP.NO.4463 OF 2002

1. D. Ravi
   S/o. Dhanadapani Chettiar

2. D. Banumathi,
   S/o. Dhanadapani Chettiar

3. D. Sumathi
   D/o. Dhanadapani Chettiar

4. D. Gomathi,
   D/o. Dhanadapani Chettiar

5. D. Suryakumari
   W/o. late Gopinath

6. D. Kanchana
   D/o. late Gopinath

7. G. Kalpana
   D/o. late Gopinath

8. G. Balaji & Srinivasan
   S/o. late Gopinath

All are residing at
6/7, Church Street,
Ariyankupam, Pondichery. .. Appellants/LRs of Defendant

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Vs.

1. Raghunath (died)
   S/o. Dhandapani Chettiar
   25-C, Rose Apartments,
   Venkatanagar, Pondicherry

2. Uma Maheswari

3. Minor R. Pradeepa
   rep. by her mother & next
   friend Uma Maheswari

R2 and R3 are brought on record as LRs of the deceased sole respondent as per order dated 18.12.03 in CMP.No.15485 & 15486 of 2003 ..Respondents/LRs of Plaintiff

Letter Patent Appeal filed under Clause 15 of the Letter Patent against the judgment and decree dated 5.12.2001 passed by the learned single Judge of this Court in A.S.No.280 of 1986.(O.S.No.295/1980 on the file of the Court of the II Additional Subordinate Judge, Pondicherry)

For Appellants : Mr.T.P. Manoharan

For Respondents 2&3: Mr.V. Raghavachari

- - -

J U D G M E N T

P.K. MISRA, J

The legal representatives of the original defendant are the appellants against the reversing decision.

2. The facts giving rise to the present appeal are as follows :-

Plaintiff is the son of the defendant. A sale deed was executed by the defendant on 2.11.1978 in respect of an immovable property. In such document, it has been recited that consideration money of Rs.15,500/- had been paid to the vendor. Subsequently, the document was presented for

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registration on 2.11.1978. The defendant admitted the execution of the document. However, since permission contemplated under Section 26 of the Urban Land (Ceiling and Regulation) Act had not been obtained, the registering authority passed an order on 10.12.1979 refusing to register the document. An appeal filed under section 72 of the Registration Act, 1908, was rejected by the appellate authority by order dated 17.4.1980. Application for obtaining copy of the order was filed on 13.5.1980 and the order of the appellate authority was made available on 30.5.1980. O.S.No.295 of 1980 was filed before the Principal Sub-Judge, Pondicherry, on 16.6.1980, that is to say, the re-opening day after the summer vacation. In the said suit, the following reliefs had been claimed :-

> " (i) direct the defendant to produce the necessary permission from the competent authority under the Urban Land Ceiling Act, to register the Sale Deed executed by the Defendant in favour of the plaintiff on 2.11.1978;
>
> (ii) directing the Registrar of Pondicherry to register the sale deed dt.2.11.1978 executed by the defendant in favour of the plaintiff, as if it was presented for registration on 2.11.1978;
>
> (iii) in default the Court may obtain necessary permission on behalf of the defendant for the Registration of the document dt. 211.1978;
>
> (iv) for delivery of possession of the said property to the plaintiff. ..."

The averment in the plaint was to the effect that the defendant, after having executed the sale deed, did not apply in the proper form for permission under Section 26(2) of the Urban Land (Ceiling and Regulation) Act, and therefore, the document could not be registered because of the absence of such permission. It was stated in the plaint that cause of action of the plaint arose on 2.11.1978, when the defendant received the amount and executed sale deed, and on 17.4.1980, when the Registrar dismissed the appeal. The suit was valued for the purpose of court fee and jurisdiction at Rs.15,500/- and court fee of Rs.1,163/- was paid under section 42(a) of the Pondicherry Court Fees and Suit Valuation Act. The

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plaintiff had framed the suit as if it was a suit for specific performance of a contract. The Registrar was not impleaded as a defendant.

In the written statement filed by the defendant, the execution of the sale deed on 2.11.1978 was admitted. It was contended therein that the sale price was fixed at Rs.15,500/-, out of which Rs.5,500/- was to be paid at the time of execution of the sale deed and balance Rs.10,000/- was to be paid on or before the date of signing the application to be filed before the Authorised Officer for obtaining the necessary permission under the Urban Land (Ceiling and Regulation) Act. However, the plaintiff subsequently evaded and refused to pay the balance amount of Rs.10,000/- and the defendant refused to sign the application. The plaintiff had issued lawyer's notice to the defendant calling upon the defendant to sign the application for obtaining permission. The defendant gave a reply indicating that on payment of the balance amount, the defendant was willing to sign the application for obtaining the permission. It was specifically stated in the written statement that the defendant is ready to co-operate with the plaintiff in obtaining the permission, provided the plaintiff pays the balance amount of Rs.10,000/-.

3. The trial court framed the following issues :-

> "1. Whether the defendant has not received a sum of Rs.10,000/- on the date of signing of the application ?
>
> 2. Whether the sale deed executed by the defendant in favour of the plaintiff is a valid one ?
>
> 3. Whether the plaintiff is entitled to get the sale deed restored or not ?
>
> 4. To what other relief the plaintiff is entitled to?"

4. Under Issue No.1, the trial court held that the plaintiff had not established that he had paid a sum of Rs.10,000/- on the date of signing the application for obtaining permission. Under Issue Nos.2 & 3, the trial court held that in view of the prohibition contained in the Urban

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Land (Ceiling and Regulation) Act, the transaction was not a completed contract, but it was an inchoate contract, and in view of the statutory prohibition, such inchoate agreement could not be enforced by the Court of law. Since the question of obtaining permission from the authority was within the volition of the defendant, the Court could not enforce specific performance of such term and cannot force the defendant to seek for permission from the authority. The Court was also not competent to file any application for permission. Ultimately, it was held that the agreement cannot be specifically enforced under Section 14(1)(d) of the Specific Relief Act. Under Issue No.4, the court observed that since the defendant admitted receipt of Rs.5,500/-, the plaintiff was entitled to receive that amount from the date of payment. However, the trial court dismissed the suit.

5. In appeal, the learned single Judge of this Court has held that in the absence of the Registrar as a defendant in the suit, relief No.2 claimed by the plaintiff cannot be granted. Learned single Judge has also agreed that relief No.3 could not be granted by the trial court in view of the fact that the Urban Land (Ceiling and Regulation) Act had been subsequently repealed. Learned single Judge observed that there was no requirement in law to obtain any permission. Learned single Judge further observed that the relief could be suitably moulded and ultimately directed the appellate authority under the Registration Act to re-hear the appeal afresh on merits and dispose of the same in accordance with law and to consider whether there is any requirement to get any No Objection Certificate from the Competent Authority in view of the repeal of the Act in 1999. On the basis of the aforesaid direction, the learned single Judge directed the plaintiff to re-submit the returned sale deed along with a copy of the order of the High Court and the original order dated 17.4.1980. Time was granted till 21.1.2002. In other words, indirectly a direction was given in accordance with Section 77 of the Registration Act. Learned single Judge had also observed that by taking into account the period in obtaining the copy of the appellate authority under the Registration Act and considering the fact that the suit had been filed on the reopening day, the suit was not barred by limitation as contemplated under Section 77 of the Registration Act, 1908.

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6. Learned counsel appearing for the appellant has submitted that after having found that in the absence of the Registrar as a defendant in the suit, Relief No.2 cannot be claimed, and after having held that in view of the repeal of the Urban Land (Ceiling and Regulation) Act, Relief No.3 could not be granted, the learned single Judge has committed error in granting the same relief as claimed in Relief No.2 by directing the appellate authority under the Registration Act to reconsider the appeal to find out if No Objection Certificate is required, even though the appellate authority was not a party in the suit or in the first appeal. Learned counsel has further submitted that in view of the finding of the trial court that out of the agreed amount of Rs.15,500/-, a sum of Rs.10,000/-, which was payable at the time of taking permission, was yet to be paid and in view of considerable lapse of time, in equity, the learned single Judge should not have given a direction to the appellate authority under the Registration Act to reconsider the question of registration.

7. Learned counsel appearing for the respondents on the other hand has submitted that the learned single Judge has rightly taken note of the change of law and has issued a direction to the appellate authority to consider the appeal to find out any permission was necessary in view of the repeal of the Urban Land (Ceiling and Regulation) Act. It has been submitted by him that the registering authorities were not necessary parties in the suit and even in their absence, the direction issued by the learned single Judge should have been issued. Learned counsel has further submitted that in fact the suit must be taken to be one under Section 77 of the Registration Act, and therefore, the direction of the learned single Judge was proper, as the learned single Judge has moulded the relief taking into account the change of law during the pendency of the appeal.

8. As already noticed, the plaintiff / respondent had prayed for four reliefs, including the relief of delivery of possession. Strictly speaking, the suit cannot be construed as a suit contemplated under Section 77 of the Registration Act, even though Relief No.2 can be stated to be in terms of Section 77. Learned single Judge has observed that in the absence of the Registrar as a defendant in the suit, Relief No.2 claimed by the plaintiff cannot be granted. Learned counsel for the appellant has submitted that in view of the

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specific observation of the learned single Judge, the modified decree issued by the learned single Judge in directing the appellate authority under the Registration Act, to reconsider the appeal, virtually amounts to grant of the very same relief, even though the learned single Judge has categorically held that the relief is not available to be granted in the absence of the Registrar. Learned counsel appearing for the respondents has however submitted that even in a suit under Section 77 of the Registration Act, the Registrar or the appellate authority under the Registration Act is not a necessary party, and therefore, the modified decree has been rightly issued by the learned single Judge.

9. Sections 72, 76 and 77 of the Registration Act, being relevant, are extracted hereunder :-

> "72. Appeal to Registrar from order of Sub-Registrar refusing registration on ground other than denial of execution.- (1) Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order; and the Registrar may reverse or alter such order.
>
> (2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub Registrar shall obey the same and thereupon shall so far as may be practicable, follow the procedure prescribed in Secs.58,59 and 60 and such registration shall take effect as if the document had been registered when it was first duly presented for registration.
>
> 76. Order of refusal by Registrar.-(1) Every Registrar refusing-
>
> (a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

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(b) to direct the registration of a document under Section 72 or Section 75,

shall make an order or refusal and record the reasons for such order in his Book NO.2 and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a Registrar under this section or Section 72.

77. Suit in case of order of refusal by Registrar.-(1) Where the Registrar refuses to order the document to be registered, under Section 72 or Section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of the refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree.

(2) The provisions contained in sub-section (2) and (3) of Section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit."

10. It is evident from Section 77(1) that the suit as contemplated can be filed where the Registrar refuses to order the document to be registered under Section 72 or section 76. The relevant provisions are contained in Part XII of the Registration Act under the heading "Of refusal to Register". Under Section 71(1), every Sub-Registrar refusing to register the document shall make an order of refusal and record his reasons for such order, except when such refusal is on the ground that the property to which the document relates is not situate within the Sub-District of which the Sub-Registrar is in charge. Section 72 contemplates an appeal before the

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Registrar against such order of refusal, except where refusal is made on the ground of denial of execution. Under Section 72(2), if the Registrar directs that the document to be registered and thereafter the document is duly presented before the Sub Registrar, the Sub Registrar is required to follow such direction. Section 73 contemplates application to the Registrar when the refusal to register is on the ground of denial of execution. Under Section 76(1)(b), every Registrar refusing to direct the registration of a document under Section 72 or Section 75, shall make an order of refusal and record the reasons for such order and on an application, shall give the copy of the reasons so recorded. No further appeal lies against the order of the Registrar passed under Section 76 or Section 72. However, Section 77 contemplates that within 30 days after the making of the order of refusal, a suit can be filed for a decree directing the document to be registered in the office of the Registrar and thereafter the provisions contained in Section 75(2) and (3) shall apply *mutatis mutandis* to all documents presented for registration in accordance with any such decree.

11. A perusal of the aforesaid provisions makes it clear that refusal to register a document can be on the ground that the property is not situate within the jurisdiction or on the ground that execution of the document is denied and if it is found by the Registrar that such document is not executed by the executant. Apart from these two stated grounds, the refusal can be on any other ground for which reason is to be recorded. Obviously such refusal can be on the ground of any prohibition contained in any law.

12. In the present case, refusal to register the document was on account of the provisions contained in Section 28(a) read with Section 26 of the Urban Land (Ceiling and Regulation) Act. Under Section 26(1), no person holding vacant land within the ceiling limit shall transfer such land except after giving notice in writing of the intended transfer to the competent authority. Under Section 26(2), upon receipt of such notice, the competent authority shall have the first option to purchase such land on behalf of the State Government. However, if such option is not exercised within a period of sixty days from the date of receipt of the notice, it shall be presumed that the competent authority has no intention to purchase such land and it shall be lawful to such person to transfer such land to whomsoever he may like. Under

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Section 28(a), there is embargo upon the registering authority not to register a sale deed unless the transferor produces evidence to show that he had intended transfer to the competent authority and the period of 60 days has lapsed from the date of such notice.

13. It is not disputed that in the present case, even though the sale deed after execution was presented for registration, the Sub-Registrar refused to register such document on the ground that notice, as contemplated under Section 26 of the Urban Land (Ceiling and Regulation) Act, had not been issued and similar reason was given by the Registrar, namely the appellate authority, for refusing registration.

14. The contention which was raised before the learned single Judge is to the effect that the Urban Land (Ceiling and Regulation) Act having been repealed, there was no further requirement of complying with Section 26 of the Urban Land (Ceiling and Regulation) Act, and therefore, a direction should be issued to the registering authority. Even though the learned single Judge held that such a direction as contemplated under Relief No.2 cannot be issued in the absence of the Registrar as a party, nevertheless, issued a direction to the appellate authority, namely, the Registrar, to consider the appeal afresh to find out if any notice as contemplated under Section 26 was necessary after the repeal of the Urban Land (Ceiling and Regulation) Act. In effect, this order issued by the learned single Judge amounts to granting the second relief claimed in the suit in a modulated form. The contention raised by the appellants is to the effect that in the absence of the appellate authority or the Registrar, even such direction could not have been issued.

15. Learned counsel appearing for the respondents has submitted that in a suit contemplated under Section 77 of the Registration Act, the registering authority or the appellate authority need not be impleaded as a defendant, as such authorities are only statutory authorities, who are discharging their statutory duties, and they are bound to follow any direction issued by the Civil Court. For the aforesaid purpose, he has placed reliance upon a decision reported in I.L.R. Vol.V Calcutta 445 (RADHAKISSEN ROWRA DAKNA v. CHOONEELOLL DUTT). The aforesaid decision rendered by a learned single Judge relates to an instance where the refusal was on account of denial of execution. After execution

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of the document, the defendant had refused to attend at the office of the Registrar for the purpose of admitting execution and consequently the registration was refused and thereafter the suit was filed. A contention was raised that in the absence of Registrar, such a suit was not maintainable. Learned single Judge found that there was denial of execution within the meaning of Section 74. Learned single Judge observed *"I do not think the Registrar is a necessary party to the suit. Had there been anything in the circumstances of the case that led me to think he ought to be made a party, I should have adjourned the hearing to allow of this being done."*

16. It is thus obvious that in the said case the denial was on account of the fact that the executant had denied the execution of the document, and therefore, the matter was essentially between the plaintiff, who was seeking registration, and the defendant, who had denied execution.

17. In AIR 1991 CALCUTTA 391 (SK.MD. ISMAIL v. SK. ANWAR ALI AND OTHERS), it was observed as follows :-

> "15. Lastly, the non-addition to the sub-registrar (as) a party would not in this case be fatal to the suit although Shri Banarjee urges this point in support of the appeal. It was a statutory suit against the decision of a public Officer and as such the officer deciding the matter had hardly any duty to justify his decision. The order of the court of a competent jurisdiction was binding on him in spite of his non-joinder as a party."

18. A perusal of the facts also clearly indicates that in the said case, refusal to register the document was on account of non-appearance of the executant before the Sub-Registrar. In other words, the executant had not admitted the execution of the document.

19. In the decision of the Bombay High Court reported in ('84) 8 Bombay 269 (WISHAMBHAR PANDIT v. PARABHAKAR BHAT), it was observed that in a suit under Section 77, neither the registering officer nor the Government was a necessary party.

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20. As against the aforesaid decisions, the learned counsel appearing for the appellants has placed reliance upon the Bench decision of this Court reported in A.I.R.(32)1945 MADRAS 11 (PENUMOODY KANAKARATNAM v. PENUMOODY VENKATARATNAM). In the said case, the plaintiff had alleged that her deceased husband had executed Will, which was duly attested. After the death of the husband, the plaintiff/widow applied to the Sub-Registrar for registration of the Will. There was no opposition to her application and in fact one of the attesting witnesses had supported her stand. The Sub-Registrar, however, rejected the application for registration as he was not satisfied that the Will had been executed by the deceased husband. Such order was confirmed in appeal, even though the plaintiff's contention was unopposed. Thereafter, suit was filed under Section 77 of the Registration Act and the attesting witness was made the defendant and the Registrar was not impleaded. Such defendant filed a written statement alleging that the Will was a forgery. Subsequently, the defendant filed an additional written statement stating that the alleged Will would not bind his reversionary rights and no cause of action existed against him. Such contention was accepted by the trial court, which held that the defendant was not a necessary party and the trial court held that as there was no defendant, the suit was not maintainable. However, in spite of such finding that the suit was not maintainable, the trial court went into the question of validity of the Will and came to the conclusion that it was not a genuine document and on such conclusion, the suit was dismissed. The Division Bench, on appeal, while distinguishing the decision of the Bombay High Court, observed as follows :-

> " There can be no suit without a cause of action against some one and the person against whom the cause of action arises must be made a party. Here no cause of action existed against Venkataratnam. On the other hand, as we have already pointed out, he supported the plaintiff before the Sub-Registrar and before the Registrar. The Sub-Registrar rejected the application on his own initiative and his action was concurred in by the Registrar. The Registrar's order was the final order and it is his order which must be regarded as rejecting the plaintiff's application for registration. There was a cause of action by reason of the rejection of the plaintiff's application and,

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in the circumstances,she should have made the Registrar the defendant if she wished to proceed with the matter. The fact that registration was refused would not, of course, affect the validity of the will, should it prove to be a genuine document." (Emphasis added)

21. The aforesaid decision of the Bombay High Court was distinguished on the ground that in the said case, registration was opposed by a party, and, therefore, the proper defendant was the person who opposed the registration.

22. From the aforesaid decision of the Madras High Court, it is apparent what where the registration is refused on account of opposition by a private party, it may be sufficient to implead such party as a defendant because the refusal is on account of such opposition by the private party, but where the opposition is from the Registrar, the latter should be impleaded as defendant.

23. In the present case, it is apparent that refusal was on account of the objection raised by the Sub-Registrar as well as the Registrar regarding non-compliance of Section 26 read with Section 28 of the Urban Land (Ceiling and Regulation) Act. Therefore, the ratio of the decisions of Calcutta High Court or the Bombay High Court is not applicable and the observation of the Division Bench of the Madras High Court to the effect "*there was a cause of action by reason of the rejection of the plaintiff's application and, in the circumstances, she should have made the Registrar the defendant, if she wished to proceed with the matter*" is applicable to the present case. The learned single Judge has rightly observed that in the absence of the Registrar, Relief No.2 claimed could not be granted.

24. Learned counsel appearing for the respondents has also referred to the Division Bench decision of this Court reported in A.I.R. 1954 MADRAS 681 (KAKARLA VENKATASUBBAYYA AND ANOTHER v. SRAVANAM VENKATARATHNAMMA). Such decision was relating to a document which had been executed and was registered in respect of one person only and the Sub-Registrar had refused to register such document against other executant, who had failed to appear before the Sub-Registrar. The question was whether suit for specific performance of the oral agreement to re-convey against such person could be

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maintained. It was observed that the plaintiff was not entitled to bring such suit for specific performance of the oral contract and the proper procedure to be adopted in such a case was to bring a suit under Section 77 of the Registration Act for enforcing registration of the document executed in his favour. The question as to whether in such a suit the registering authority is a necessary party or not was neither raised nor decided. As a matter of fact, while allowing the appeal and setting aside the decree for specific performance of the oral agreement, the Division Bench directed the appellant to refund the consideration which has been received from the respondent.

25. Learned counsel for the respondents has also placed reliance upon the decision of the Madras High Court reported in A.I.R. 1949 MADRAS 775 (ALLURU BAPANAYYA v. CHINTALAPATI BANGARRAJU). The said decision is relating to scope of Section 77. There is nothing in the said decision which lays down that the Registrar need not be made a party.

26. Similarly, there is nothing on this aspect indicated in A.I.R. 1962 MADRAS 421 (RANJITHAMMAL v. SOWBAGYATHAMMAL).

27. It is of course true that in such decisions, namely, AIR 1949 MADRAS 775, AIR 1954 MADRAS 681 and AIR 1962 MADRAS 421 (cited above), the Registrar does not appear to be a party. However, since no such question has been raised or decided, merely because the Registrar was not a party, it cannot be assumed that the ratio of the decision in AIR 1945 MADRAS 11 (cited supra) has been in any way altered in the subsequent decisions.

28. As a matter of fact, as already observed, the learned single Judge himself has come to the conclusion that in the absence of the Sub-Registrar / Registrar, the relief directing registration of the document cannot be granted. In our opinion, the learned single Judge was right in expressing such view. Once this conclusion is reached, it is obvious that the modulated relief granted by the learned single Judge could not have been granted as the appellate authority or the Registrar, who is directed under the modified decree to reconsider the appeal, was not a party.

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29. Even assuming that the Registrar was not a necessary party and the Registrar being a statutory authority a direction could be issued, the validity and the propriety of the direction issued by the learned single Judge is to be considered.

30. It is of course true that any subsequent change in law can be taken note of by the trial court or the appellate court. In the present case, there is no dispute that the Urban Land (Ceiling and Regulation) Act has been repealed by the time when the appeal was taken for consideration. However, it has to be decided whether the learned single Judge was justified in giving a direction to the appellate authority to reconsider the appeal relating to refusal to register. The trial court had found that out of the consideration amount of Rs.15,500/-, a sum of Rs.10,000/- was yet to be paid, as such amount was to be paid as per the evidence of the original defendant at the time of seeking permission, i.e., at the time of issuing notice to the authorities under Section 26 of the Urban Land (Ceiling and Regulation) Act. Such finding was on the basis of the evidence of the defendant. The trial court had also observed that the evidence of the plaintiff on that score was more vague, and therefore, the case of the defendant was acceptable. The contemporaneous conduct of the defendant, as expressed in the relevant document at that time, also clearly corroborates the subsequent stand of the defendant that a sum of Rs.10,000/- was yet to be paid. It is of course true that for considering the question of registration of the document, the question as to whether consideration has been paid in full or not was irrelevant. However, as already pointed out, the suit cannot be taken to be a suit merely under Section 77 of the Registration Act. In the suit not only there is prayer for issuing a direction to the defendant to obtain permission as contemplated under Section 26 of the Urban Land (Ceiling and Regulation) Act, but also there is a prayer for delivery of possession. Therefore, the learned single Judge was not correct in holding that the question as to whether full consideration has been paid or not is irrelevant. For considering the first relief as well as fourth relief, it was a relevant aspect to consider whether full consideration has been paid or not. The finding of the trial court has not been touched on merit by the learned single Judge. Even otherwise we find that in view of the categorical statement of the

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defendant and in the absence of any convincing evidence on this score from the side of the plaintiff, it was correctly found by the trial court that a sum of Rs.10,000/-, which was payable at the time of seeking permission, had remained unpaid. The plaintiff did not indicate that he was willing to pay such outstanding amount and the matter had remained pending over a period of about 20 years. In such view of the matter, it would be inequitable to issue a direction for completion of the transaction, particularly keeping in view the fact that the original dispute was between the plaintiff and his father, the defendant. The decision of the Supreme Court relied upon by the appellants reported in (1999) 5 SCC 77 (K. NARENDRA v. RIVIERA APARTMENTS (P) LTD.) is more or less applicable to the facts and circumstances of the present case. In the aforesaid decision, it was observed :-

> "36. We have already held that until the repeal of ULCRA in the year 1999 the property agreed to be transferred was incapable of being transferred for failure of the requisite permission under ULCRA which situation continued to prevail for a period of about 16 years from the date of agreement until the repeal of ULCRA. In the facts and circumstances of the case we do not think it appropriate to extend the benefit of the subsequent event of repeal of ULCRA in favour of the respondent-plaintiffs after a lapse of 16 years from the date of the contract. Permission for constructing a multi-storeyed complex on the premises was refused time and again by NDMC until the suit for specific performance came to be decreed by the trial court. On none of the two events either of the parties had any control. We are clearly of the opinion that at one point of time the contract had stood frustrated by reference to Section 56 of the Contract Act. We do not think that the subsequent events can be pressed into service for so reviving the contract as to decree its specific performance."

31. It is of course true that the learned single Judge has considered the said decision by simply observing that such decision arose out of a suit for specific performance of the contract whereas the present suit is not of that nature. We are unable to accept such conclusion of the learned single Judge as in our opinion the suit is essentially one for specific performance to the extent as indicated in

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Relief No.1 praying for a direction to the defendant to seek for permission under Section 26 of the Urban Land (Ceiling and Regulation) Act. By no stretch of imagination the suit can be said to be one under Section 77. It is obvious that the plaintiff wants to enforce the contract either by directing the defendant to seek permission under Section 26 of the Urban Land (Ceiling and Regulation) Act or by directing registration of the document as contemplated under Section 77 of the Act and in addition he also wants possession of the property. Having regard to all these features, we feel, even though strictly speaking, the suit was not for specific performance of a contract in a restricted sense, yet, the ratio of the decision of the Supreme Court in (1999) 5 SCC 77 (cited supra) would be applicable keeping in view the nature of relief claimed in the suit.

32. In such view of the matter, the judgment and the decree passed by the learned single Judge cannot be upheld. However, keeping in view the admitted position that a sum of Rs.5500/- had been received by the original defendant and the present defendant is merely the legal representative of the original defendant, the present defendant is required to refund such consideration of Rs.5500/- along with 10% interest from the date of filing of the suit till payment. It is further clarified that the original plaintiff/the present respondents, the legal representatives of the original plaintiff, being entitled to joint possession of the property, it would be open to the plaintiff / respondents to enforce their right by filing appropriate suit for partition or any other appropriate relief in accordance with law.

33. The appeal is allowed subject to the aforesaid direction. No costs. Consequently, C.M.P.NO.1706 & VCMP.No.4463 of 2002 are closed.

28-07-2005

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The II Additional Subordinate Judge, Pondicherry

2. The Record Keeper, VR Section, High Court, Madras

1 cc to Mr.V.Raghavachari, Advocate, SR.31637
1 cc to Mr.T.P.Manoharan, Advocate, SR.31944

ra (co)

dv/10.8.05 JUDGMENT IN LPA.15/2002

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